IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.596 OF 2004

Bhimrao Appa Khandangale ...Appellant

vs.

Dada Bhimrao Shinde & Ors. ...Respondents

Mr.D.R.More for the Appellant

CORAM: A.S.OKA,J.
DATE : NOVEMBER 26,2007.

P.C.:

1. Heard Advocate for the Appellant. The Appeal is by unsuccessful plaintiff. According to the case of the plaintiff his father and one Shripati (predecessor in title of the Respondents) were holding the suit property. They mortgaged the suit property on 2nd October 1925 in favour of one Narayan. In the year 1939, the property was redeemed in the name of Shripati. Thereafter, Shripati mortgaged the said property in favour of Bandu. The suit property was sold by the widow of the deceased Shripati to the respondent in the year 1980.

2. The suit is filed by the Appellant by raising a contention that the suit property continues to be an ancestral property and it was not the exclusive property of Shripati and therefore, the property could not have been transferred by the said Shripati and his widow. The trial court dismissed the

suit and the Appellate Court has confirmed the decree of the trial court.

3. The submission of the learned Advocate for the Appellant is that the document at Exh.57 has not been considered by the Appellate Court. He submitted that the partition of the year 1925 relied upon by the Respondent does not relate to the suit property and therefore, the property continued to be an ancestral property.

4. I have considered the submissions. The finding of the courts below is that as there was a partition effected between the brothers i.e. the father of the Appellant and Shripati. There is nothing on record to show that the property was redeemed by Shripati in the year 1939 by utilising the funds or the income of the ancestral family or joint family. After the property was redeemed in the year 1939, the said Shripati executed a mortgage in the year 1971 and thereafter his widow made alienation in the year 1980. The finding of fact recorded on the basis of evidence is that there was nothing to show that the property was redeemed by utilising joint family funds. Another finding is that there was a partition in the year 1925. In view of the findings of fact, no substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE